

MORT.

## RESPONSE SUMMARY

### AMENDMENT BYLAW NO. 2459.21

- Approval Recommended for Reasons Outlined Below
- Interests Unaffected by Bylaw
- Approval Recommended Subject to Conditions Below
- Approval Not Recommended Due to Reasons Outlined Below

This office recommends Having an "Authorized Person" as defined in the Sewerage System Regulation investigate the subject property and confirm whether or not suitable sites exist on the subject property for installation of onsite sewerage dispersal systems sized to accommodate sewage flows from the proposed redevelopment of the subject property.

Signature: *John C. Beaupre*  
 Agency: Interior Health Authority  
 Date: November 03, 2016

Signed By: John C. Beaupre  
 Title: Environmental Health Officer



## Lauri Feindell

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**From:** Cooper, Diana FLNR:EX <Diana.Cooper@gov.bc.ca>  
**Sent:** November 4, 2016 4:12 PM  
**To:** Evelyn Riechert  
**Cc:** Lauri Feindell  
**Subject:** RE: Bylaw Referral - E2016.100-ZONE

Hello Evelyn,

Thank you for your referral regarding zoning changes proposed for 2255 Naramata Road, Naramata, BC, PID 012231380, L 21 DL 206 SIMILKAMEEN DIVISION YALE DISTRICT PL 576 EXC PL H17800. According to Provincial records there are no known archaeological sites recorded on the subject property. However, archaeological potential modeling for the area indicates there is the possibility for unknown/unrecorded archaeological sites to exist on the property.

Archaeological sites (both recorded and unrecorded, disturbed and intact) are protected under the *Heritage Conservation Act* and must not be altered or damaged without a permit from the Archaeology Branch.

Prior to any land alterations (*e.g.*, addition to home, property redevelopment, extensive landscaping, service installation), an Eligible Consulting Archaeologist should be contacted to review the proposed activities and, where warranted, conduct a walk over and/or detailed study of the property to determine whether the work may impact protected archaeological materials. An Eligible Consulting Archaeologist is one who is able to hold a Provincial heritage permit that allows them to conduct archaeological studies. Ask an archaeologist if he or she can hold a permit, and contact the Archaeology Branch (250-953-3334) to verify an archaeologist's eligibility. Consulting archaeologists can be contacted through the BC Association of Professional Archaeologists ([www.bcapa.ca](http://www.bcapa.ca)) or through local directories.

If the archaeologist determines that development activities will not impact any archaeological deposits, then a permit is not required. Occupying an existing dwelling or building without any land alterations does not require archaeological study or permitting.

In the absence of a confirmed archaeological site, the Archaeology Branch cannot require the proponent to conduct an archaeological study or obtain a permit prior to development. In this instance it is a risk management decision for the proponent.

If any land-altering development is planned and proponents choose not to contact an archaeologist prior to development, owners and operators should be notified that if an archaeological site is encountered during development, activities **must** be halted and the Archaeology Branch contacted at 250-953-3334 for direction. If an archaeological site is encountered during development and the appropriate permits are not in place, proponents will be in contravention of the *Heritage Conservation Act* and likely experience development delays while the appropriate permits are obtained.

Below is a screenshot showing the property (outlined in yellow) in relation to the archaeological potential (brown/orange areas). As can be seen, the entire area within which the property is located has high potential.

If this does not represent the property listed in the data request please contact me.

Kind regards,

Diana





**Diana Cooper** | Archaeologist/Archaeological Site Inventory Information and Data Administrator

Archaeology Branch | Ministry of Forests, Lands and Natural Resource Operations  
Unit 3 – 1250 Quadra Street, Victoria, BC V8W2K7 | PO Box 9816 Stn Prov Govt, Victoria BC V8W9W3  
Phone: 250-953-3343 | Fax: 250-953-3340 | Website: <http://www.for.gov.bc.ca/archaeology/>

**From:** Lauri Feindell [mailto:lfeindell@rdos.bc.ca]  
**Sent:** Friday, October 14, 2016 5:12 PM  
**To:** HBE@interiorhealth.ca; Skinner, Anne E AGRI:EX; Collins, Martin J ALC:EX; Cooper, Diana FLNR:EX; Referral Apps REG8 FLNR:EX; fbclands@fortisbc.com; PIB Referrals (referrals@pib.ca); onareception@syilx.org  
**Cc:** Evelyn Riechert  
**Subject:** Bylaw Referral - E2016.100-ZONE

Re: Lot 21, DL206, SDYD, Plan 576, Except Plan H17800  
2255 Naramata Road, Naramata

Please review the attached Bylaw Referral, along with the rationale, and site plans and provide any comments/concerns you may have. Please contact the File Manager, Evelyn Riechert if you have any queries.

Any questions, please do not hesitate to contact Evelyn.

Kind Regards,

**Lauri Feindell** Administrative Assistant, Planning  
Regional District of Okanagan-Similkameen  
101 Martin Street, Penticton, BC V2A 5J9  
p. 250.490.4107 | tf. 1.877.610.3737 | f. 250.492.0063  
[www.rdos.bc.ca](http://www.rdos.bc.ca) | [lfeindell@rdos.bc.ca](mailto:lfeindell@rdos.bc.ca)  
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## Lauri Feindell

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**From:** Danielson, Steven <Steven.Danielson@fortisbc.com>  
**Sent:** November-09-16 9:47 AM  
**To:** Planning  
**Subject:** Naramata Rd, 2255 Naramata (E2016.100-ZONE)

With respect to the above noted file,

There are FortisBC Inc (Electric) ("FBC(E)") transmission and primary distribution facilities along Naramata Road. The applicant is responsible for costs associated with any change to the subject property's existing service, if any, as well as the provision of appropriate land rights where required.

Otherwise, FBC(E) has no concerns with this circulation.

In order to initiate the design process, the customer must call 1-866-4FORTIS (1-866-436-7847). It should be noted that additional land rights issues may arise from the design process but can be dealt with at that time, prior to construction.

If you have any questions or comments, please contact me at your convenience.

Best Regards,

*Steven Danielson,  
Contract Land Agent for:*

**Nicholas Mirsky, B.Comm., AACI, P.App.  
Supervisor | Property Services | FortisBC Inc.**

2850 Benvoulin Rd  
Kelowna, BC V1W 2E3  
Office: 250.469.8033  
Mobile: 250.718.9398  
Fax: 1.866.636.6171  
[nicholas.mirsky@fortisbc.com](mailto:nicholas.mirsky@fortisbc.com)

**FORTIS BC**

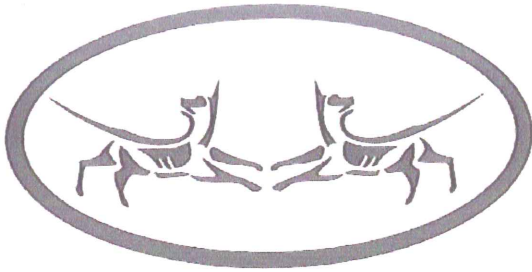
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# Penticton Indian Band

Natural Resource Department  
R.R. #2, Site 80, Comp.19  
Penticton, B.C. CAN  
V2A 6J7

Telephone: 250-492-0411 Fax: 250-493-2882

October-24-16

**WITHOUT PREJUDICE AND NOT TO  
BE CONSTRUED AS CONSULTATION**

Regional District of Okanagan Similkameen  
101 Martin Street  
Penticton, BC V2A 5J9

Referral ID: 2016-10-14 ZON 2035

RTS #: 2035

Date: October-14-16

Reference #: BYL2459.21 D2016 100-ZONE

Summary: Agriculture One Site Specific Zone that will permit for one accessory dwelling floor area to be increased to 184 m2 from the 140 m2 permitted. 2255 Naramata Road.

**ATTENTION: Evelyn Riechert**

We are in receipt of the above referral. The proposed activity is located within Okanagan Nation Territory and the PIB Area of Responsibility. All lands and resources within the vicinity of this referral are subject to our unextinguished Aboriginal Title and Rights.

The Supreme Court of Canada in the *Tsilhqot'in* case has confirmed that the province and Canada have been applying an incorrect and impoverished view of Aboriginal Title, and that Aboriginal Title includes the exclusive right of Indigenous People to manage the land and resources as well as the right to benefit economically from the land and resources. The Court therefore concluded that when the Crown allocates resources on Aboriginal title lands without the Indigenous peoples' consent, it commits a serious infringement of constitutionally protected rights that will be difficult to justify.

Penticton Indian Band has specific referral processing requirements for both government and proponents which are integral to the exercise of our Rights to manage our lands and resources and to ensuring that the Crown can meet its duty to consult and accommodate our Rights, including our Aboriginal Title and management Rights. There is a cost associated with PIB referral processing and engagement. In accordance with PIB policy, proponents are required to pay a processing fee for each referral. This fee is as follows:

**Invoice Number: 598**

	SubTotal	Tax	Total
Admin (12%)	\$ 52.50	\$ 0.00	\$ 52.50
G.I.S. Tracking and Review (GIS Project Technican)	\$ 110.00	\$ 0.00	\$ 110.00
R.T.S. Data Entry (Technical Services)	\$ 80.00	\$ 0.00	\$ 80.00
Referral	\$ 67.50	\$ 0.00	\$ 67.50

<sup>1</sup>The area over which PIB asserts Aboriginal Rights and Title under Section 35 of the Constitution Act, 1982

Assessment (Band Administrator)			
Referral Coordination (Referrals Coordinator)	\$ 190.00	\$ 0.00	\$ 190.00
Total	\$ 500.00	\$ 0.00	\$ 500.00

**INVOICE AMOUNT FOR PRELIMINARY OFFICE REVIEW \$500.00**

Please make cheque payable to Penticton Indian Band. re: P.C.132 RTS #2035

This fee must be paid within 30 days. Proper consultation and consideration of potential impacts cannot occur without the appropriate resources therefore it is only with payment that proper consultation can begin and the proposed activity/development can be fully reviewed.

Upon receipt of the processing fee, we will commence our review. You may then expect to receive a letter from us notifying you of the results of our review of potential impacts of the project within 30 to 90 days.

If the proposed activity requires a more in-depth review, Penticton Indian Band will notify the proponent and all parties will negotiate a memorandum of agreement regarding a process for review of the proposed activity.

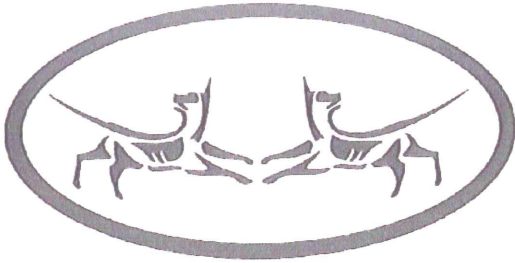
Please note that our participation in the referral and consultation process does not define or amend PIB's Aboriginal Rights and Title, or limit any priorities afforded to Aboriginal Rights and Title, nor does it limit the positions that we may take in future negotiations or court actions.

If you require further information or clarification, please do not hesitate to contact me.

lmlømt,

Lavonda Nelson  
Data Management Clerk

<sup>1</sup>The area over which PIB asserts Aboriginal Rights and Title under Section 35 of the Constitution Act, 1982



## Penticton Indian Band

Natural resource Department  
R.R. #2, Site 80, Comp.19  
Penticton, B.C. CAN  
V2A 6J7

Telephone: 250-492-0411 Fax: 250-493-2882

**WITHOUT PREJUDICE AND NOT TO  
BE CONSTRUED AS CONSULTATION**

October-24-16

Regional District of Okanagan Similkameen  
101 Martin Street  
Penticton, BC V2A 5J9

**Referral ID:** 2016-10-14 ZON 2035

**RTS #:** 2035

**Date:** October-14-16

**Reference #:** BYL2459.21 D2016 100-ZONE

**Summary:** Agriculture One Site Specific Zone that will permit for one accessory dwelling floor area to be increased to 184 m<sup>2</sup> from the 140 m<sup>2</sup> permitted. 2255 Naramata Road.

**Attention: Evelyn Riechert**

**RE: Request for a 60 (sixty) day extension**

Thank you for the above application that was received on October-24-16. This letter is to inform you that due to current levels of internal capacity, we are unable to review your referral in your proposed timeline. With additional time, Penticton Indian Band will be able to ensure that an informed review process will occur. We are setting the new timeline to be 60 days from the existing timeline.

Most recently, the Supreme Court of Canada in the Tsilquot'in case confirmed that the province has been applying an incorrect and restrictive test to the determination of Aboriginal Title, and that Aboriginal Title includes the exclusive right of a First Nation to decide how that land is used and the right to benefit economical from those uses.

Please note that not receiving a response regarding a referral from Penticton Indian Band in the pre-application, current or post-application stage does not imply our support for the project.

I appreciate your co-operation.

Limlæmt,

Lavonda Nelson  
Data Management Clerk



## Lauri Feindell

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**From:** Danielson, Steven <Steven.Danielson@fortisbc.com>  
**Sent:** November 9, 2016 9:47 AM  
**To:** Planning  
**Subject:** Naramata Rd, 2255 Naramata (E2016.100-ZONE)

With respect to the above noted file,

There are FortisBC Inc (Electric) ("FBC(E)") transmission and primary distribution facilities along Naramata Road. The applicant is responsible for costs associated with any change to the subject property's existing service, if any, as well as the provision of appropriate land rights where required.

Otherwise, FBC(E) has no concerns with this circulation.

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If you have any questions or comments, please contact me at your convenience.

Best Regards,

*Steven Danielson,  
Contract Land Agent for:*

**Nicholas Mirsky, B.Comm., AACI, P.App.  
Supervisor | Property Services | FortisBC Inc.**

2850 Benvoulin Rd  
Kelowna, BC V1W 2E3  
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Fax: 1.866.636.6171  
[nicholas.mirsky@fortisbc.com](mailto:nicholas.mirsky@fortisbc.com)

**FORTIS BC**

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**Lauri Feindell**

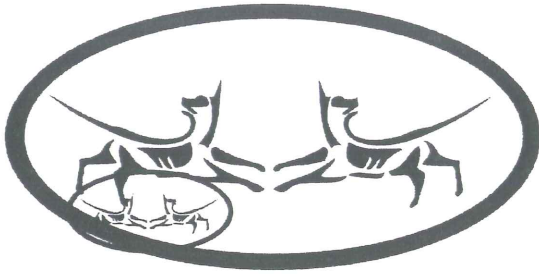
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**From:** Lacey, Cathy M ENV:EX <Cathy.Lacey@gov.bc.ca>  
**Sent:** October 19, 2016 1:21 PM  
**To:** Planning  
**Subject:** Your file D2016.096-ZONE

Hi,

The Section Head for Ecosystems, Grant Furness, with the Ministry of Forest Lands & Natural Resource Operations has reviewed the above noted referral and has "No Concerns".

Cathy Lacey  
Admin Support  
MOE/MFLNRO Penticton



## Penticton Indian Band

Natural resource Department  
R.R. #2, Site 80, Comp.19  
Penticton, B.C. CAN  
V2A 6J7

Telephone: 250-492-0411 Fax: 250-493-2882

**WITHOUT PREJUDICE AND NOT TO  
BE CONSTRUED AS CONSULTATION**

December-07-16

Regional District of Okanagan Similkameen  
101 Martin Street  
Penticton, BC V2A 5J9

**Referral ID:** 2016-10-14 ZON 2035

**RTS #:** 2035

**Date:** October-14-16

**Reference #:** BL2459.21 D2016 100-ZONE

**Summary:** Agriculture One Site Specific Zone that will permit for one accessory dwelling floor area to be increased to 184 m2 from the 140 m2 permitted. 2255 Naramata Road.

**Attention: Evelyn Riechert**

**Re: RTS Invoice #598**

We write regarding your failure to pay invoice #598 to conduct a review to obtain additional information in the area of the above referral. To date, no payment has been received and we have therefore been unable to conduct a review of this referral; we must therefore put you on notice that we do not consent, agree or otherwise approve of the activity / development referred to by you in your letter to us dated October-14-16.

**Please make cheque payable to Penticton Indian Band. re: P.C. 132 RTS #2035**

The Okanagan Nation holds unextinguished aboriginal title to the land and resources within our traditional territory. The above-noted activity / development is within PIB's Area of Responsibility within Okanagan territory and as such, is subject to Okanagan title, jurisdiction, rights and interests, and PIB decision making and responsibility.

Over the last two decades, the Supreme Court of Canada has clarified the law respecting the rights of aboriginal people in British Columbia, which includes the Penticton Indian Band, Okanagan Nation. The Court has clarified that Aboriginal title continues to exist in British Columbia, and is protected by s. 35 of the *Constitution Act, 1982*.

Most recently, in June 2014, the Supreme Court of Canada in the *Tsilhqot'in* case set out the following characteristics and implications of Aboriginal title:

- ◆ Aboriginal title is not limited to intensively used sites; it extends to lands physically occupied and lands over which Indigenous peoples exercised control. Regular use of territories for hunting, fishing, trapping and foraging, with an intention and capacity to control the lands, grounds Aboriginal title.





- ◆ The Crown has no beneficial interest (the right to use, enjoy and profit from the economic development of lands) in Aboriginal title lands and resources; the beneficial interest is held by the Aboriginal title holding group. Allocations of Aboriginal title lands or resources to third parties are serious infringements of Aboriginal title.
- ◆ Aboriginal title includes the right to proactively use and manage the resources.
- ◆ Once Aboriginal title is “established”, the constitution prohibits incursions without the consent of the Aboriginal title holders unless the Crown can justify the infringement, which in turn requires a compelling and substantial public purpose as well as consistency with the Crown’s fiduciary duty to the Aboriginal title holders, requiring the involvement of the Aboriginal title holding group in decisions.
- ◆ Before Aboriginal title is “established”, the only way to ensure certainty is to obtain consent; in the absence of consent, the Crown must consult and accommodate. If consultation or accommodation is inadequate, the Crown decision can be suspended or quashed. Moreover, fulfilling the duty to consult and accommodate does not provide the certainty that consent provides; once Aboriginal title is established, the Crown may be required to cancel projects where there was no consent and the justification test noted above cannot be met.

At this time there has been no reconciliation of our interests with those of the Province of British Columbia and Canada and no process in place to adequately recognize and negotiate co-existence or accommodation of our jurisdiction and title. The Province continues to act as though we have no beneficial interest or authority, and it takes for itself the revenues derived from our lands and resources. The payment of the referral fee is necessary in order for us to assess your proposal, assess potential impacts and determine whether it should be approved and if so, on what conditions. Because we are unable to undertake such an assessment, we must at this time advise you that we are opposed to your proposed development/activity.

If you require further information or clarification, please do not hesitate to contact me.

lilməmt,

Lavonda Nelson  
Referrals Administrator  
P: 250-492-0411  
Referrals@pib.ca

cc: Penticton Indian Band (jpepper@pib.ca), ONA (salexis@syilx.org)